

2014 -- S 2438 SUBSTITUTE A

LC004170/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO AGRICULTURE AND FORESTRY - RENEWABLE ENERGY FACILITIES

Introduced By: Senators DiPalma, Sosnowski, and Kettle

Date Introduced: February 27, 2014

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 2 of the General Laws entitled "AGRICULTURE AND FORESTRY"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 23.3

4 FARM CONSERVATION AND RENEWABLE ENERGY

5 **2-23.3-1. Short title.** – This act shall be known and may be cited as the “Farm
6 Conservation and Renewable Energy Act of 2014.”

7 **2-23.3-2. Legislative findings.** – The general assembly finds and declares that:

8 (1) Renewable energy facilities can reduce the operating costs of farms and provide
9 critical revenue to maintain economically viable agricultural operations;

10 (2) Preserving farmland and strengthening the viability of farming are essential public
11 purposes, necessary to the health and welfare of the people of the state; and

12 (3) Farms are significant energy consumers and given the size and openness of many of
13 Rhode Island’s farms, they can be good locations for renewable energy facilities.

14 **2-23.3-3. Definitions.** – (a) “Agricultural product” means the product of the propagation
15 care, cultivation, raising, and harvesting of the products of truck farming, horticulture, turf,
16 viticulture, viniculture, floriculture, forestry/tree farming, growing vegetables for farming, sugar
17 bush or the production of fiber.

18 (b) “Farm” means land owned by a farmer and used to grow agricultural products or raise
19 livestock.

1 (c) “Farmer” means an individual, partnership or corporation who operates a farm and
2 has filed a 1040F U.S. Internal Revenue Form with the Internal Revenue Service, has a state farm
3 tax number, has earned ten thousand dollars (\$10,000) gross income on farm products in each of
4 the preceding four (4) years and all farming activities comply with the standard set forth in § 2-1-
5 22(i).

6 (d) “Flicker” means alternating changes in light intensity caused by the moving blade of a
7 wind turbine casting shadows on the ground and stationary objects.

8 (e) “Livestock” means horses, cows, sheep, poultry or bees or other living creatures kept
9 for use and profit.

10 (f) “Net metering” means net metering as that term is defined and used in chapter 39-28-
11 26.4.

12 (g) “Office” means the office of energy resources.

13 (h) “Renewable energy facility” means a facility that supplies energy, including but not
14 limited to, electrical and thermal energy, from a renewable energy resource as defined in § 39-
15 26-5.

16 **2-23.3-4. Renewable energy facilities as a permitted accessory use of farms. –**
17 Commencing August 1, 2015, renewable energy facilities eligible under § 39-26-5 shall be a
18 permitted accessory use, as defined by § 45-24-31, for all farms of at least twenty-five (25)
19 contiguous acres, that is not protected, preserved, or otherwise designated under chapter 39 of
20 title 34, chapter 82 of title 42, chapter 27 of title 44, or chapter 36 of title 45.

21 **2-23.3-5. Siting and operating standards. –** (a) Municipalities shall adopt, as a separate
22 ordinance or within the local zoning ordinance, siting and operating standards for renewable
23 energy facilities. At a minimum, the siting and operating standards must address wind turbines,
24 including requirements for flicker, noise, and setback. Any other renewable energy facility types
25 for which standards are not given shall be allowed, by right, as permitted accessory uses and shall
26 be required to follow the dimensional requirements of the zone in which the farm is located.

27 (b) Until a municipality adopts such standards, all wind turbines proposed to be accessory
28 uses in this chapter shall be approved or denied based upon the state wind turbine guidelines,
29 prepared in 2015 by the Rhode Island office of energy resources and the division of planning.

30 (c) In preparing siting and operating standards, municipalities shall be required to submit
31 the siting and operating standards at least thirty (30) days prior to adoption for review and
32 comment by the Rhode Island office of energy resources and the division of planning.

33 (d) No distributed generation renewable energy facility shall be located on land that is
34 protected, preserved, or otherwise designated under chapter 39 of title 34, chapter 82 of title 42,

1 chapter 27 of title 44, or chapter 36 of title 45. Net-metered facilities shall be eligible on such
2 properties.

3 (e) Farm land that is not protected, preserved, or otherwise designated under chapter 39
4 of title 34, chapter 82 of title 42, chapter 27 of title 44, or chapter 36 of title 45 shall be allowed to
5 install a distributed generation, net-metered, or a configuration of the two facilities.

6 (f) Nothing contained herein shall prevent a net-metering facility on any farm.

7 **2-23.3-6. Duties of the municipality.** – (a) Municipalities shall adopt, within an
8 ordinance containing the renewable energy siting and operating standards, a process by which
9 renewable energy facility applications may be certified as complete. Any application determined
10 to be incomplete shall be returned to the applicant, together with a concise and explicit statement
11 of the application's deficiencies. Failure to return the application within thirty (30) days shall
12 mean that such application is deemed complete.

13 (b) The ordinance shall also describe the process by which applications that are certified
14 as complete will be approved or denied, including requirements that:

15 (1) Approval shall only be given for facilities that qualify as distributed generation or net-
16 metered projects as defined in chapters 26.2 and 26.4 of title 39;

17 (2) The determination shall be wholly based on the adopted standards; and

18 (3) A final decision on each application shall be given within sixty (60) days of the
19 application being complete.

20 (c) The ordinance may establish a fee for the permitting of such facilities in an amount
21 necessary to recover the reasonable costs associated with the project licensing; professional
22 consultation services engaged by the municipality to assist project specific determinations; and
23 monitoring and verification services. In establishing and determining the specific fees, the
24 municipality shall consult with the Rhode Island office of energy resources and the division of
25 planning.

26 **2-23.3-7. Applicability of other laws.** – Notwithstanding any other provisions of this
27 chapter, renewable energy facilities shall be required to obtain any and all necessary state
28 approvals and permits prior to construction.

29 **2-23.3-8. Construction.** – This chapter, being necessary for the welfare of the state and
30 its inhabitants, shall be liberally construed so as to effectuate its purposes.

31 **2-23.3-9. Severability.** – If any clause, sentence, paragraph, section, or part of this
32 chapter shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall
33 not affect, impair, or invalidate the remainder of the chapter, but shall be confined in its operation
34 to the clause, sentence, paragraph, section, or part directly involved in the controversy in which

1 [that judgment shall have been rendered.](#)

2 SECTION 2. Section 45-24-37 of the General Laws in Chapter 45-24 entitled "Zoning
3 Ordinances" is hereby amended to read as follows:

4 **45-24-37. General provisions -- Permitted uses.** -- (a) The zoning ordinance provides a
5 listing of all land uses and/or performance standards for uses which are permitted within the
6 zoning use districts of the municipality.

7 (b) Notwithstanding any other provision of this chapter, the following uses are permitted
8 uses within all residential zoning use districts of a municipality and all industrial and commercial
9 zoning use districts except where residential use is prohibited for public health or safety reasons:

- 10 (1) Households;
11 (2) Community residences; and
12 (3) Family day care homes.

13 (c) Any time a building or other structure used for residential purposes, or a portion of a
14 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire
15 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured
16 home or homes, as the need may be, elsewhere upon the land, for use and occupancy of the
17 former occupants for a period of up to twelve (12) months, or until the building or structure is
18 rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated
19 agent of the owner, is only allowed to cause the mobile and manufactured home or homes to
20 remain temporarily upon the land by making timely application to the local building official for
21 the purposes of obtaining the necessary permits to repair or rebuild the structure.

22 (d) Notwithstanding any other provision of this chapter, appropriate access for people
23 with disabilities to residential structures is allowed as a reasonable accommodation for any
24 person(s) residing, or intending to reside, in the residential structure.

25 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling
26 unit in an owner-occupied, single-family residence shall be permitted as a reasonable
27 accommodation only for family members with disabilities. The appearance of the structure shall
28 remain that of a single-family residence and there shall be an internal means of egress between
29 the principal unit and the accessory family dwelling unit. If possible, no additional exterior
30 entrances should be added. Where additional entrance is required, placement should generally be
31 in the rear or side of the structure. When the structure is serviced by an individual sewage
32 disposal system, the applicant shall have the existing or any new system approved by the
33 department of environmental management. The zoning enforcement officer shall require that a
34 declaration of the accessory family dwelling unit for the family member or members and its

1 restrictions be recorded in the land evidence records and filed with the zoning enforcement officer
2 and the building official. Once the family member or members with disabilities no longer resides
3 in the premises on a permanent basis, or the title is transferred, the property owner shall notify the
4 zoning official in writing, and the accessory family dwelling unit shall no longer be permitted,
5 unless there is a subsequent, valid application.

6 (f) When used in this section the terms "people with disabilities" or "member or
7 members with disabilities" means a person(s) who has a physical or mental impairment which
8 substantially limits one or more major life activities, as defined in section 34-37-3 of the general
9 laws.

10 (g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted
11 use within all zoning districts of a municipality, including all industrial and commercial zoning
12 districts, except where prohibited for public health or safety reasons or the protection of wildlife
13 habitat.

14 (h) Notwithstanding any other provisions of this chapter, beginning August 1, 2015,
15 renewable energy facilities shall be permitted accessory uses for all farms, as defined by § 2-23.3-
16 3. of at least twenty-five (25) contiguous acres.

17 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO AGRICULTURE AND FORESTRY - RENEWABLE ENERGY FACILITIES

- 1 This act would provide for certain siting and operation standards and permitting
- 2 processes for renewable energy facilities on farms over twenty-five (25) acres.
- 3 This act would take effect upon passage.

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